

CHARLES W. CUTTER—SURETIES OF

[To accompany bill H. R. No. 759.]

JANUARY 24, 1857.

Mr. TAPPAN, from the Committee on the Judiciary, made the following

REPORT.

The Committee on the Judiciary, to whom was referred the petition of Ralph C. Cutter and others, asking to be relieved from a judgment rendered against them as sureties for Charles W. Cutter, formerly navy agent at Portsmouth, New Hampshire, report :

That after mature investigation of the case, they have come to the conclusion that the relief sought, as aforesaid, should be granted.

The committee find the facts of the case to be, in brief, substantially as follows :

On the 3d of April, 1850, Charles W. Cutter, then navy agent at Portsmouth, N. H., made a requisition upon the Navy Department for \$18,400, on account of the floating dock then building at that yard, which requisition, duly approved by the commandant of the yard, was expressly stated to be for the *seventh* payment on account of said dock, the agent stating that the amount would be probably required on the 17th of that month.

On the 23d of April, another requisition was made by said navy agent for the same sum of \$18,400, on account of the same floating dock, which requisition was also expressly stated to be for the same *seventh* payment, and which was also approved by the commandant of the yard.

It further appears that the Navy Department, without adverting to the fact that the requisitions expressed on their face that they were for the same payment, forwarded to the said agent double the amount which should have been forwarded, viz: \$36,800 instead of \$18,400. The excuse for which laches is "the press of business" at the time in the bureau.

It also appears that the \$18,400, thus acknowledged to have been wrongfully placed in the hands of said agent, was suffered to remain there fifteen months without any effort on the part of the department to correct its error. At the expiration of which time said agent had become hopelessly insolvent, and was soon after removed from office.

Subsequently a suit was brought by the United States in the circuit

court for the district of New Hampshire, and judgment recovered against the sureties for \$18,397 98, upon which judgment, execution having issued, a compulsory payment was made amounting to the sum of \$8,477 51, leaving the balance still uncollected. The sureties ask to be released from this judgment, and to have the amount thus paid refunded to them from the treasury, and the committee are of opinion that their request should be granted.

It is clear in this case that the burden thus thrown upon the sureties arose from the acknowledged carelessness of the officers of the government. Mr. Dobbin, Secretary of the Navy, in his letter, dated January 15, 1855, to the chairman of the Committee on the Judiciary, says: "It is very evident that two requisitions were drawn by the navy agent in the same month for the same object. *This ought not to have been so.* It was not discovered by the chief of the bureau at the time, nor until July of the following year, some fifteen months after the transaction. *This ought not to have been so either.*" In the case of the People of New York *vs.* Jansen, (7 Johnson, 352,) a case similar in principle to this, Judge Thompson, afterwards of the Supreme Court of the United States, decided that the sureties, in calculating their liabilities, *had a right to rely upon the performance by public officers of their duty.* This principle was acknowledged and established in the case of Thomas Ap Catesby Jones, surety for a postmaster at Norfolk, Virginia, who was released, by an act of the 33d Congress, from a judgment obtained against him, as well as reimbursed for money paid under said judgment, in consequence of the neglect of the Post Office Department, in allowing funds unreasonably to accumulate in the hands of said postmaster. No principle of equity seems more clear than that a neglect of duty on the part of a creditor, whether public or private, ought to discharge a surety from the consequences of such neglect. The negligence of the government officer in this case has thrown upon the sureties a liability which they never could have contemplated, for they did not undertake to be responsible for the carelessness of the Navy Department.

The committee, therefore, report a bill for the relief of said sureties.